IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Marriage of:	)	
	)	DIVISION ONE
MARGO H. KIMBERLY,	)	
	)	No. 60307-8-I
Appellant,	)	
	)	
and	)	UNPUBLISHED OPINION
	)	
DELYNN KIMBERLY,	)	
	)	
Respondent.	)	FILED: July 27, 2009
	)	

Dwyer, A.C.J. — Unless a child support order expressly provides otherwise, a parent's child support obligation terminates when the supported child is emancipated by operation of law upon reaching 18 years of age. In this case, the order requiring DeLynn Kimberly to support his daughter Ashlyn did not expressly provide that his obligation would extend beyond Ashlyn's 18th birthday. Therefore, the trial court correctly ruled that Margo Lechner was time barred from seeking to modify the support order after Ashlyn turned 18 years old. Accordingly, we affirm.

I

In 1993, after the dissolution of Margo Lechner's and DeLynn Kimberly's marriage, the trial court entered an order for child support requiring Kimberly to support his and Lechner's daughters, Ashlyn and Alyssa. Ashlyn and Alyssa were five and three years old at the time. The order provided that "[s]upport shall be paid . . . until the obligation for post secondary support set forth in [the order] begins for the child(ren)." The order did not, however, specify a date on which Kimberly's obligation for postsecondary support would begin. Instead, it reserved this issue "until such time as the children are older." In addition, the order did not specify the date by which the parties would have to address the issue of postsecondary support. On July 3, 2006, two weeks after Ashlyn's 18th birthday, Lechner petitioned to modify the child support order to obtain postsecondary support for Ashlyn. The trial court dismissed Lechner's petition for "lack of jurisdiction" because she had failed to file it before Ashlyn's 18th birthday.

II

Lechner contends that her petition to modify the child support order was timely.[1] She is incorrect.

The default rule for the length of a parent's obligation to pay child support is that it lasts until the emancipation of the child. "Unless otherwise agreed in

[1] It is incorrect to frame this issue as a question concerning the trial court's subject matter jurisdiction. See In re Marriage of Major, 71 Wn. App. 531, 536, 859 P.2d 1262 (1993).

writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child." RCW 26.09.170(3). Emancipation occurs by operation of law when a child reaches the age of majority by turning 18 years of age. RCW 26.28.010; In re Marriage of Gimlett, 95 Wn.2d 699, 702, 629 P.2d 450 (1981). "A support obligation may continue beyond a child's majority if the decree provides that support is to continue until the child is no longer dependent." In re Marriage of Gillespie, 77 Wn. App. 342, 346, 890 P.2d 1083 (1995) (citing Childers v. Childers, 89 Wn.2d 592, 597 n.1, 575 P.2d 201 (1978)). However, a provision in a child support order for postmajority support must be clearly expressed and cannot be ambiguous. In re Marriage of Main, 38 Wn. App. 351, 352, 684 P.2d 1381 (1984).

Although the order for child support herein anticipated the possibility that Kimberly would be required to provide postmajority support, it did not expressly obligate him to do so. Rather, it reserved the issue for a later date. Because the order did not expressly provide that Kimberly would have a support obligation past Ashlyn's 18th birthday, the statutory rule concerning emancipation governed the scope of his obligation. Under RCW 26.09.170(3), Kimberly's obligation ended when Ashlyn turned 18 years of age. Any petition for modification of the support order had to be filed before Ashlyn's 18th birthday. See Gillespie, 77 Wn. App. at 347–48 (holding that the trial court lacked authority to modify a support decree pursuant to a petition filed after the parent's

obligation ended); Main, 38 Wn. App. at 352–53 (same). That the order did not specify a date by which the parties would have to address the reserved issue of postmajority support is of no consequence. The statutory scheme provided that any petition for modification had to be filed before Ashlyn reached 18 years of age.[2] Therefore, because Lechner did not move to modify the support order until after Ashlyn's 18th birthday, the trial court correctly dismissed her petition.

III

Kimberly also requests attorney fees on the basis that Lechner's appeal is frivolous.[3] "'[A]n appeal is frivolous if there are no debatable issues upon which reasonable minds might differ, and it is so totally devoid of merit that there was no reasonable possibility of reversal.'" Millers Cas. Ins. Co. v. Briggs, 100 Wn.2d 9, 15, 665 P.2d 887 (1983) (quoting Streater v. White, 26 Wn. App. 430, 434–35, 613 P.2d 187 (1980)). "All doubts as to whether an appeal is frivolous should be resolved in favor of the appellant." Gillespie, 77 Wn. App. at 349 (citing Mass. Mut. Life Ins. Co. v. Dep't of Labor & Indus, 51 Wn. App. 159, 166, 752 P.2d 381 (1988)). "An appeal is not frivolous merely because the arguments are rejected." Gillespie, 77 Wn. App. at 349–50 (citing Streater, 26 Wn. App. at 434–35). In light of the child support order's reservation of the

[2] We are not insensitive to the fact that Lechner filed her petition only two weeks after Ashlyn's 18th birthday and is proceeding pro se. However, a pro se litigant is bound by the same rules of procedure and substantive law as are parties represented by counsel. See In re Marriage of Olson, 69 Wn. App. 621, 626, 850 P.2d 527 (1993).

[3] Kimberly also moved for attorney fees before the trial court. The trial court denied his request because there was no showing that he had financially contributed to his daughter's college tuition and expenses.

issue of postsecondary

support, Lechner's argument is not frivolous. Accordingly, we deny Kimberly's request for fees.

Affirmed.

Dwyer, A.C.J.

We concur:

Ann, J.

Becker, J.